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# HOUSE BILL No. 1400

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 25-1-1.1-2; IC 34-24-1-1; IC 35-48-4-8.1; IC 35-48-4-8.5.

**Synopsis:** Drug paraphernalia. Increases the penalty for manufacturing paraphernalia related to a controlled substance other than or in addition to marijuana, hash oil, or hashish from a Class A misdemeanor to a Class D felony by creating the offense of manufacture of controlled substance paraphernalia. Increases the penalty for dealing in paraphernalia related to a controlled substance other than or in addition to marijuana, hash oil, or hashish from a Class A misdemeanor to a Class D felony by creating the offense of dealing in controlled substance paraphernalia. Provides that the penalty for dealing in or manufacturing paraphernalia is enhanced for a person who has a prior judgment or conviction for manufacturing, dealing, or possession of paraphernalia. Makes related changes in the laws governing the suspension of licenses and the confiscation of property for a violation of the laws governing paraphernalia.

**Effective:** July 1, 2003.

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## Smith V

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January 14, 2003, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1400

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 25-1-1.1-2, AS AMENDED BY P.L.17-2001,  
2       SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2003]: Sec. 2. A board, a commission, or a committee may  
4       suspend or revoke a license or certificate issued under this title by the  
5       board, the commission, or the committee if the individual who holds  
6       the license or certificate is convicted of any of the following:

7               (1) Possession of cocaine, a narcotic drug, or methamphetamine  
8               under IC 35-48-4-6.

9               (2) Possession of a controlled substance under IC 35-48-4-7(a).

10              (3) Fraudulently obtaining a controlled substance under  
11              IC 35-48-4-7(b).

12              (4) Manufacture of paraphernalia as a Class D felony under  
13              IC 35-48-4-8.1(b).

14              (5) **Manufacture of controlled substance paraphernalia**  
15              **(IC 35-48-4-8.1(c)).**

16              (6) Dealing in paraphernalia as a Class D felony under  
17              IC 35-48-4-8.5(b).



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1 **(7) Reckless dealing in paraphernalia (IC 35-48-4-8.5(c)).**

2 **(8) Dealing in controlled substance paraphernalia**  
 3 **(IC 35-48-4-8.5(d)).**

4 ~~(6)~~ **(9)** Possession of paraphernalia as a Class D felony under  
 5 IC 35-48-4-8.3(b).

6 ~~(7)~~ **(10)** Possession of marijuana, hash oil, or hashish as a Class  
 7 D felony under IC 35-48-4-11.

8 ~~(8)~~ **(11)** Maintaining a common nuisance under IC 35-48-4-13.

9 ~~(9)~~ **(12)** An offense relating to registration, labeling, and  
 10 prescription forms under IC 35-48-4-14.

11 ~~(10)~~ **(13)** Conspiracy under IC 35-41-5-2 to commit an offense  
 12 listed in subdivisions (1) through ~~(9)~~: **(12).**

13 ~~(11)~~ **(14)** Attempt under IC 35-41-5-1 to commit an offense listed  
 14 in subdivisions (1) through ~~(9)~~: **(12).**

15 ~~(12)~~ **(15)** An offense in any other jurisdiction in which the  
 16 elements of the offense for which the conviction was entered are  
 17 substantially similar to the elements of an offense described under  
 18 subdivisions (1) through ~~(11)~~: **(14).**

19 SECTION 2. IC 34-24-1-1, AS AMENDED BY P.L.123-2002,  
 20 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2003]: Sec. 1. (a) The following may be seized:

22 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
 23 intended for use by the person or persons in possession of them to  
 24 transport or in any manner to facilitate the transportation of the  
 25 following:

26 (A) A controlled substance for the purpose of committing,  
 27 attempting to commit, or conspiring to commit any of the  
 28 following:

29 (i) Dealing in or manufacturing cocaine, a narcotic drug, or  
 30 methamphetamine (IC 35-48-4-1).

31 (ii) Dealing in a schedule I, II, or III controlled substance  
 32 (IC 35-48-4-2).

33 (iii) Dealing in a schedule IV controlled substance  
 34 (IC 35-48-4-3).

35 (iv) Dealing in a schedule V controlled substance  
 36 (IC 35-48-4-4).

37 (v) Dealing in a counterfeit substance (IC 35-48-4-5).

38 (vi) Possession of cocaine, a narcotic drug, or  
 39 methamphetamine (IC 35-48-4-6).

40 ~~(vii) Dealing in paraphernalia (IC 35-48-4-8.5).~~

41 ~~(viii)~~ **(vii)** Dealing in marijuana, hash oil, or hashish  
 42 (IC 35-48-4-10).

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(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

**(E) A raw material, an instrument, a device, or other object for the purpose of committing, attempting to commit, or conspiring to commit any of the following:**

**(i) Manufacture of paraphernalia (IC 35-48-4-8.1).**

**(ii) Manufacture of controlled substance paraphernalia (IC 35-48-4-8.1(c)).**

**(iii) Dealing in paraphernalia (IC 35-48-4-8.5).**

**(iv) Reckless dealing in paraphernalia (IC 35-48-4-8.5(c)).**

**(v) Dealing in controlled substance paraphernalia (IC 35-48-4-8.5(d)).**

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

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(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

**(E) Manufacture of controlled substance paraphernalia (IC 35-48-4-8.1(c)).**

**(F) Dealing in controlled substance paraphernalia (IC 35-48-4-8.5(d)).**

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47-5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person

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who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 3. IC 35-48-4-8.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.1. (a) A person who manufactures, finances the manufacture of, or designs an instrument, a device, or other object that is intended to be used primarily for:

(1) introducing into the human body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for manufacturing paraphernalia.

(b) A person who:

(1) knowingly or intentionally ~~violates this section~~ **commits a violation of subsection (a) related to paraphernalia for marijuana, hash oil, or hashish;** and

(2) has a previous judgment **or conviction** for violation of this section **or section 8.3 or 8.5 of this chapter;**

commits manufacture of paraphernalia, a Class D felony.

(c) **A person who recklessly manufactures, finances the manufacture of, or designs an instrument, a device, or other object that is intended to be used primarily for:**

**(1) introducing into the human body a controlled substance other than or in addition to marijuana, hash oil, or hashish;**

**(2) testing the strength, effectiveness, or purity of a controlled substance other than or in addition to marijuana, hash oil, or**

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hashish; or  
 (3) enhancing the effect of a controlled substance other than  
 or in addition to marijuana, hash oil, or hashish;  
 in violation of this chapter commits manufacture of controlled  
 substance paraphernalia, a Class D felony. However, the offense is  
 a Class C felony if the person has a previous judgment or  
 conviction under this section or section 8.3 or 8.5 of this chapter.

SECTION 4. IC 35-48-4-8.5 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.5. (a) A person who  
 keeps for sale, offers for sale, delivers, or finances the delivery of a raw  
 material, an instrument, a device, or other object that is intended to be  
 or that is designed or marketed to be used primarily for:

- (1) ingesting, inhaling, or otherwise introducing into the human  
 body marijuana, hash oil, hashish, or a controlled substance;
- (2) testing the strength, effectiveness, or purity of marijuana, hash  
 oil, hashish, or a controlled substance;
- (3) enhancing the effect of a controlled substance;
- (4) manufacturing, compounding, converting, producing,  
 processing, or preparing marijuana, hash oil, hashish, or a  
 controlled substance;
- (5) diluting or adulterating marijuana, hash oil, hashish, or a  
 controlled substance by individuals; or
- (6) any purpose announced or described by the seller that is in  
 violation of this chapter;

commits a Class A infraction for dealing in paraphernalia.

(b) A person who:

- (1) knowingly or intentionally ~~violates~~ **commits a violation of**  
 subsection (a) **related to paraphernalia for marijuana, hash**  
**oil, or hashish;** and
- (2) has a previous judgment or conviction ~~under~~ **for violation of**  
 this section **or section 8.1 or 8.3 of this chapter;**

commits dealing in paraphernalia, a Class D felony.

(c) A person who recklessly keeps for sale, offers for sale, or  
 delivers an instrument, a device, or other object that is to be used  
 primarily for:

- (1) ingesting, inhaling, or otherwise introducing into the human  
 body marijuana, hash oil, ~~or hashish; or a controlled substance;~~
- (2) testing the strength, effectiveness, or purity of marijuana, hash  
 oil, ~~or hashish; or a controlled substance;~~
- (3) enhancing the effect of ~~a controlled substance;~~ **marijuana,**  
**hash oil, or hashish;**
- (4) manufacturing, compounding, converting, producing,

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processing, or preparing marijuana, hash oil, **or** hashish; ~~or a controlled substance;~~

(5) diluting or adulterating marijuana, hash oil, **or** hashish; ~~or a controlled substance by individuals; or~~

(6) any purpose announced or described by the seller that is in violation of this chapter;

commits reckless dealing in paraphernalia, a Class A misdemeanor. However, the offense is a Class D felony if the person has a previous judgment or conviction under this section **or section 8.1 or 8.3 of this chapter.**

(d) **A person who recklessly keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:**

(1) ingesting, inhaling, or otherwise introducing into the human body a controlled substance other than or in addition to marijuana, hash oil, or hashish;

(2) testing the strength, effectiveness, or purity of a controlled substance other than or in addition to marijuana, hash oil, or hashish;

(3) enhancing the effect of a controlled substance other than marijuana, hash oil, or hashish;

(4) manufacturing, compounding, converting, producing, processing, or preparing a controlled substance other than or in addition to marijuana, hash oil, or hashish;

(5) diluting or adulterating a controlled substance other than or in addition to marijuana, hash oil, or hashish, by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter related to a controlled substance other than or in addition to marijuana, hash oil, or hashish;

**commits dealing in controlled substance paraphernalia, a Class D felony. However, the offense is a Class C felony if the person has a previous judgment or conviction under this section or section 8.1 or 8.3 of this chapter.**

(e) This section does not apply to the following:

(1) Items marketed for use in the preparation, compounding, packaging, labeling, or other use of marijuana, hash oil, hashish, or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.

(2) Items marketed for or historically and customarily used in connection with the planting, propagating, cultivating, growing,

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1 harvesting, manufacturing, compounding, converting, producing,  
2 processing, preparing, testing, analyzing, packaging, repackaging,  
3 storing, containing, concealing, injecting, ingesting, or inhaling  
4 of tobacco or any other lawful substance.

5 SECTION 5. [EFFECTIVE JULY 1, 2003] **(a) IC 35-48-4-8.1 and**  
6 **IC 35-48-4-8.5, both as amended by this act, apply only to offenses**  
7 **committed after June 30, 2003.**

8 **(b) In the case of an offense that is based on a later violation**  
9 **after an earlier judgment or conviction, IC 35-48-4-8.1 and**  
10 **IC 35-48-4-8.5, both as amended by this act, apply only if the later**  
11 **violation is committed after June 30, 2003.**

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